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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM FEX, PETITIONER

v.

STATE OF MICHIGAN

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF MICHIGAN

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

RICHARD H. SEAMON
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

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QUESTION PRESENTED

Article III(a) of the Interstate Agreement on Detainers provides that a prisoner against whom a detainer has been lodged shall be brought to trial within 180 days after "he shall have caused to be delivered to the prosecuting officer and the appropriate court" a request for disposition of the charges on which the detainer was based. The question presented is whether that 180-day period begins to run when the prosecuting officer and the appropriate court receive the prisoner's request for disposition of the charges, or when the prisoner first presents that request to the prison officials in the sending State for forwarding to the appropriate officials in the receiving State.

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Council of State Government

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

The Interstate Agreement on Detainers (IAD) provides a means for a prisoner being held in one jurisdiction (the sending State) to obtain a speedy resolution of charges pending against him in another jurisdiction (the receiving State). Article III(a) of the IAD provides that a prisoner against whom a detainer has been lodged "shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court * * * written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint." This case presents the question of

when the 180-day period prescribed in Article III(a) commences. The United States is a party to the IAD, see 18 U.S.C. App. § 2, at 702, and is subject to the 180-day provision in Article III(a), see *United States* v. *Mauro*, 436 U.S. 340, 354 (1978). The Court's decision in this case will therefore govern the time period within which state prisoners subject to federal detainers must be brought to trial on the federal charges against them. A decision in favor of petitioner would mean that the 180-day period for trial in federal cases would begin to run as soon as the state prisoner presented his request for trial to prison officials in the State where he was incarcerated, even if the request was not promptly forwarded to the appropriate federal officers. The United States therefore has a substantial interest in the outcome of this case.

STATUTORY PROVISIONS INVOLVED

Article III of the Interstate Agreement on Detainers, 18 U.S.C. App., at 702-703, provides, in pertinent part, as follows:

> (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or

> his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.
>
> (b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.
>
> (c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

Article V of the Interstate Agreement on Detainers, 18 U.S.C. App., at 703-704, provides, in pertinent part:

> (c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the

jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

STATEMENT

1. On February 29, 1988, petitioner was charged in Jackson County, Michigan, with armed robbery and possession of a firearm during a felony, in violation of Mich. Comp. Laws Ann. §§ 750.529 and 750.227b (West 1991). J.A. 2-4.[1] At the time the charges were brought, petitioner was in custody in Indiana, where he was being held in connection with other charges. The Michigan authorities lodged a detainer with the Indiana prison officials at the Westville Correctional Center, where petitioner was incarcerated. J.A. 40-41.

The prison officials at the Westville Correctional Center notified petitioner of the Michigan detainer on September 7, 1988. That same day, petitioner gave the Westville prison officials a written request for disposition of the Michigan charges. That request was submitted pursuant to Article III of the Interstate Agreement on Detainers, which provides that a prisoner against whom a detainer has been lodged may "make a request for final disposition of the indictment, information, or complaint on which the detainer is based." IAD, Art. III(c). The request is to be "given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody" of the prisoner in the State in which the

[1] Petitioner was also charged with assault with intent to murder, in violation of Mich. Comp. Laws Ann. § 750.82 (West 1991), but that charge was later dismissed. J.A. 41 n.1.

prisoner is incarcerated (the "sending State"). IAD, Art. III(b). The prison official must then "promptly forward" the request to the prosecutor and the appropriate court in the State that has lodged the detainer (the "receiving State"). *Ibid.* The request is to be accompanied by a notice of the place of imprisonment, an offer of temporary custody, and a certificate by prison officials describing the terms of the prisoner's incarceration. IAD, Arts. III(a), V(c).[2]

Petitioner's request, along with the other documents required by Article III of the IAD, was mailed two weeks later, on September 22, 1988, and received by the Michigan prosecutor on September 26, 1988. Petitioner's trial on the Michigan charges began on March 22, 1989. That date was 177 days after the prosecutor received petitioner's request, and 196 days after petitioner delivered the request to the Indiana prison officials. J.A. 41.

Before trial, petitioner moved to dismiss the charges on the ground that the Michigan trial was not held within the period prescribed in Article III(a). J.A. 41. That provision states that a prisoner against whom a detainer is lodged "shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court" in the receiving State "written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint." IAD, Art. III(a). In seeking dismissal, petitioner

[2] Both Indiana and Michigan are parties to the Interstate Agreement on Detainers. See Ind. Code Ann. § 35-33-10-4 (Burns 1985); Mich. Comp. Laws Ann. §§ 780.601 *et seq.* (West 1982).

relied on Article V(c) of the IAD, which provides that when an action on pending charges has "not [been] brought to trial within the [180-day] period," the court where the charges are pending "shall enter an order dismissing the same with prejudice." J.A. 32.

Petitioner argued that the 180-day period provided in Article III(a) was exceeded because the time began to run as of the date he submitted his request to the prison officials in Indiana. The State responded that under the terms of Article III(a) the 180-day period had not expired at the time of trial, because that period did not begin to run until the request was actually delivered to the prosecuting officials in Michigan.

The trial court agreed with the State's construction of the IAD and denied the motion. Petitioner was subsequently tried before a jury and found guilty on both counts of the indictment. J.A. 42. Petitioner was sentenced to a term of from 5 to 20 years' imprisonment for the armed robbery and a consecutive term of 2 years' imprisonment for the firearm offense. J.A. 42 n.2.

2. The Michigan Court of Appeals reversed, holding that the 180-day period in Article III(a) had been exceeded. J.A. 38-39. The court of appeals determined that "the commencement of the 180-day statutory period was triggered by [petitioner's] request for final disposition to the prison officials in this case." J.A. 39. Because it was undisputed that petitioner submitted his request to the Indiana prison officials more than 180 days before the trial began, the court held that the charges against petitioner had to be dismissed. *Ibid.*

3. The Michigan Supreme Court summarily reversed. J.A. 40-50.[3] The court determined that the 180-day period began to run on the date that the prosecutor received petitioner's request for disposition of the charges. The court explained that, under the terms of Article III(a), the 180-day period begins to run only after the prisoner "has caused *delivery*," and that "delivery" means "actual receipt." J.A. 43 (emphasis in original). The court rejected petitioner's contention that the 180-day period commenced when he submitted his request to the Indiana prison officials for forwarding to the appropriate Michigan officials. The court noted that, in contrast to Article III(a)'s reference to delivery, Article III(b) requires a prisoner to "give[]" or "send[]" his request to prison officials. J.A. 43. The court reasoned that "[s]imilar language, which would indicate that the 180-day period runs from the date the request is given or sent to prison authorities, could easily have been employed in Article III(a)" if the drafters had intended to adopt petitioner's interpretation. *Ibid.*

SUMMARY OF ARGUMENT

A. The 180-day period prescribed in Article III(a) of the IAD does not begin to run until the prisoner has "caused" his request "to be delivered" to the proper officials in the receiving State. The Michigan Supreme Court correctly concluded that, under the plain language of Article III(a), the 180-day period begins when the designated officials in the receiving

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[3] Two justices dissented on the ground that summary reversal was inappropriate. J.A. 48-50. Those justices expressed no view on the merits of petitioner's claim under the IAD.

State have actually received the prisoner's request. A request has not been "caused to be delivered" until delivery has occurred. As the Michigan Supreme Court determined—and petitioner does not dispute—"delivery" includes a requirement of actual receipt. Because petitioner was brought to trial within 180 days after the prosecutor received his request, the 180-day requirement in Article III(a) was satisfied.

B. No unfairness results from the state supreme court's interpretation of Article III(a). Under Article III(b), prison officials are required to forward a prisoner's request promptly. Accordingly, in most cases a prisoner's request will be received soon after he has furnished it to prison officials. Moreover, petitioner is wrong to suggest that the prosecutor in the receiving State is in a better position than the prisoner to prevent delays caused by prison officials in the sending State. The prosecutor ordinarily does not even learn of the existence of the request until after it has been forwarded to him; he obviously is powerless to prevent delays that have already occurred. The prisoner, in contrast, is in a position to press the prison officials to transmit his request promptly.

C. Petitioner errs in asserting that the case law supports his interpretation of the 180-day provision. The great majority of courts to address the issue have interpreted the provision to commence upon actual receipt of the prisoner's request by officials in the receiving State. The history of the IAD likewise supports that interpretation. The state law provisions on which the IAD was modeled expressly provided that the time for trial would not start running until actual "delivery" or "receipt" of the request for trial by the officials responsible for the prosecution. Article III(a) of the IAD should be construed to adopt the same rule.

ARGUMENT

THE 180-DAY PERIOD IN ARTICLE III OF THE IAD DOES NOT BEGIN TO RUN UNTIL OFFICIALS IN THE RECEIVING STATE HAVE RECEIVED THE PRISONER'S REQUEST FOR DISPOSITION OF THE CHARGES

A. The Text Of Article III(a) Makes Clear That Actual Receipt Is Required To Trigger The 180-Day Period

The Interstate Agreement on Detainers provides that, if the receiving State has filed a detainer with the sending State requesting custody of the prisoner when his sentence in the sending State has ended, the prisoner may request a prompt disposition of the charges in the receiving State. If the prisoner makes such a request, the receiving State must bring him to trial within 180 days "after he shall have caused" his request "to be delivered to the prosecuting officer and the appropriate court" of the receiving State.

The question in this case is whether the 180-day period after the prisoner has "caused to be delivered" a request begins when the prisoner submits his request to the prison officials of the sending State for forwarding to the receiving State, or when the request is received by the appropriate officials of the receiving State. In our view, the Michigan Supreme Court correctly concluded that the 180-day period in Article III(a) "runs from the time when the prisoner has caused *delivery*, which is actual receipt." J.A. 43 (emphasis in original).[4]

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[4] The record establishes that the Jackson County prosecutor received petitioner's request for disposition of the charges, as well as the other required documents, on September 26, 1988. J.A. 29. The parties have assumed that the Jackson County Court also received the required documents on that date. J.A. 33. Thus, this case does not involve the questions

By providing that the 180-day period does not begin to run until after the prisoner "shall have caused" his written request for disposition and other specified documents "to be delivered" to appropriate officials in the receiving State, Article III conditions the commencement of the 180-day period on (1) the prisoner's "causing" transmittal of the required documents and (2) the "delivery" of those documents to the proper officials. Petitioner does not dispute the Michigan Supreme Court's determination that "delivery" means "actual receipt," J.A. 43, nor could he do so. In common usage, "delivery" of physical property occurs only when the transferred property comes into the actual possession of the transferee. *Black's Law Dictionary* 385 (5th ed. 1979); see *Webster's Third New International Dictionary* 597 (1986) (defining "deliver" as to "give, transfer: yield possession or control of"). Thus, the language of Article III(a) makes clear that the 180-day period does not begin to run until the proper officials have actually received the required documents.

To be sure, Article III(a) recognizes that a prisoner need not personally deliver his written request; he need only have "caused" it "to be delivered." It is hardly surprising that the Agreement uses that formulation, since prisoners who are incarcerated in one jurisdiction are not often in a position to make direct, personal delivery of a request for a prompt trial to officials in another jurisdiction. Moreover, the formulation reflects that the IAD does

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of timing that arise when the prosecutor and court receive the documents on different dates, see *People* v. *Bielecki*, 588 P.2d 377, 378 (Colo. Ct. App. 1978), or when the required documents are not all received at the same time, see *Sweat* v. *Darr*, 684 P.2d 347 (Kan. 1984); *People* v. *Esposito*, 37 Misc. 2d 386, 396 (N.Y. County Ct. 1960).

not place on the prisoner the burden of notifying the prosecuting authorities of his request for prompt disposition of the charges; instead, it places that burden on the prison officials in the sending State and merely requires the prisoner to notify those officials of his desires. But the use of the phrase "shall have caused to be delivered" does not mean that the 180-day period is triggered once the prisoner has done his part to "cause" the delivery. The Agreement also requires the request "to be delivered." A request that is not delivered has not been "caused to be delivered." Thus, unsuccessful attempts at delivery do not satisfy the express requirements of Article III(a). See L. Abramson, *Criminal Detainers* 103-104 (1979) ("The phrase 'caused to be delivered' has no relevance to the time when the inmate transmits a request to the custodian.").[5]

Petitioner contends that the 180-day period in Article III(a) should begin to run "when the prisoner tenders the request for disposition to his warden's representative." Pet. Br. 8. He bases that contention on Article III(b), which states that "[t]he written notice and request for final disposition referred to in [Article III(a)] shall be given or sent by the prisoner to the warden * * * or other official having custody of him." Petitioner argues that the 180-day period should commence when the prisoner fulfills his obligation under Article III(b), since "service is complete" at that point. Pet. Br. 8.

Petitioner's argument ignores the text of Article III(a). First, Article III(a) requires the prisoner's

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[5] The use of the future perfect tense ("shall have caused to be delivered") underscores this point. That tense focuses on the completed delivery that has previously been caused, rather than on the act of causation that will later result in a delivery.

request "to be *delivered*," not "served" (emphasis added). While effective "service" of a document might occur prior to receipt under some circumstances, cf. *Fallen* v. *United States*, 378 U.S. 139, 142-144 (1964), "delivery" denotes actual receipt, see *Hagner* v. *United States*, 285 U.S. 427, 433 (1932) (indictment charging mail fraud adequately alleged actual receipt of fraudulent material). Since petitioner does not contend that the term "delivery" is ambiguous, it is of no consequence that the use of a different term might have given rise to an ambiguity.

As the Michigan Supreme Court recognized, Article III(a) could easily have been drafted to say exactly what petitioner claims it means. See Pet. App. 40. In Article III(b), the drafters provided that the prisoner should "give[]" or "sen[d]" his request for disposition to the prison officials in the sending State having custody of him. If the drafters had intended the 180-day period to be triggered by the prisoner's submission of his request to those same prison officials in the sending State, as petitioner contends, it would have been natural for the drafters to use the same language in the timing provision of Article III(a) that is used in Article III(b) to describe the manner in which the prisoner's request is to be processed. Thus, Article III(a) could simply have provided that the 180-day period is to run from the time the written notice "shall be given or sent by the prisoner" to the corrections officials in the sending State. Instead, however, the 180-day period was made to begin after the prisoner "shall have caused to be delivered [his request for prompt disposition of the charges against him] to the prosecuting officer and the appropriate court." The difference in language in the two subsections is significant. For "[w]hen

two parts of a provision * * * use different language to address the same or similar subject matter, a difference in meaning is assumed." *Harmelin* v. *Michigan*, 111 S. Ct. 2680, 2693 n.9 (1991) (opinion of Scalia, J.); accord *Crawford* v. *Burke*, 195 U.S. 176, 190 (1904); R. Dickerson, *The Interpretation and Application of Statutes* 224-225 (1975).

B. No Unfairness Results From Giving Effect To The Language In Article III(a) Requiring Actual Receipt By Officials In The Receiving State To Trigger The 180-Day Period

Petitioner contends that the 180-day period should commence when the prisoner furnishes his request to prison officials so that the prosecutor—and not the prisoner—will bear the consequences of any delay by prison officials in forwarding the prisoner's request. Pet. Br. 8, 20. That contention is based not on the language of Article III(a) but on petitioner's view of what "[f]airness requires." *Id.* at 8. Petitioner advances several arguments to support that view, but none justifies ignoring the language of Article III(a).[6]

1. Petitioner first asserts that, if the 180-day period in Article III(a) is interpreted to commence when the receiving State officials receive the prisoner's request, "there would be little incentive for offi-

[6] Petitioner contends, in the alternative, that the 180-day period should have commenced when he was sentenced in Indiana on unrelated charges. Pet. Br. 23-27. That contention is meritless. For one thing, petitioner failed to show that the Michigan detainer had been filed at the time of his sentencing in Indiana. See J.A. 28, 30. In any event, the 180-day provision in Article III(a) cannot conceivably be read to commence on the date the detainer is filed or the date of sentencing in the sending State.

cials in either sending or receiving states to transmit a request for disposition promptly." Pet. Br. 9. Thus, he contends (*id.* at 20) that the actual-receipt rule "frustrate[s]" the purpose of the IAD to encourage prompt disposition of outstanding charges, see IAD, Art. I. He asserts that his interpretation, in contrast, would further the purpose of the IAD by providing prosecutors and prison officials with an incentive to prevent undue delays in forwarding prisoners' requests.[7]

Adopting petitioner's interpretation would not be likely to reduce or prevent delays in forwarding prisoners' requests. Prison officials have a duty under the IAD to forward a prisoner's request promptly. IAD, Art. III(b). It is reasonable to assume that in most cases they will comply with that duty. Cf. *United States Dep't of State* v. *Ray*, 112 S. Ct. 541, 550 (1991) (official conduct is accorded a presumption of regularity); accord *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). In any event, it is not self-evident that the threat of a dismissal sanction in the receiving State will put pressure on prison officials in the sending State to comply with

[7] Contrary to petitioner's assertion (Pet. Br. 18-19), the present case does not involve a "significant period[] of unexplained procrastination by the sending state authorities." Petitioner's request for disposition of the charges was mailed out two weeks after he gave it to prison officials. That is not an unreasonable amount of time. The prison officials had to prepare other documents to send along with petitioner's request, including written notice of the place of imprisonment, an offer of temporary custody, and a certificate describing the terms of petitioner's imprisonment. IAD, Arts. III(a), V(a); see *State* v. *Braswell*, 481 A.2d 413, 418 (Conn. 1984) (25-day delay not unreasonable), cert. denied, 469 U.S. 1112 (1985); *Thompson* v. *State*, 367 S.E.2d 247, 249 (Ga. Ct. App. 1988) (18-day delay not unreasonable).

the IAD, if those officials are inclined to disregard their responsibilities, since the consequences of dismissal will be visited entirely on another jurisdiction. In short, there is no reason to believe that prison officials need an incentive to meet their obligations under the IAD, or that if such an incentive is needed, petitioner's interpretation would provide one.

Contrary to petitioner's suggestion, the construction of the timing provision in Article III(a) does not create an anomalous gap in the enforcement mechanism of the IAD. At several points, the IAD relies on the good faith performance by prison officials and others of their obligations under the Agreement, as it imposes those obligations without specific accompanying sanctions to enforce them. For example, prison officials are required to inform the prisoner of the pendency of any detainers against him. If prison officials in the sending State wish to defeat the prisoner's interest in a speedy disposition of charges in another jurisdiction, they can do so by failing to notify the prisoner of the pendency of a detainer. The failure to notify the prisoner of the pendency of a detainer would violate the terms of the IAD, but the IAD does not provide any sanction for that violation. Instead, the IAD relies on the good faith performance by prison officials of their obligation to advise prisoners of the pendency of detainers against them. It is reasonable to assume that the drafters of the Agreement relied on the same assumption of good faith compliance with respect to the prison officials' obligation to forward prisoners' requests for prompt disposition of charges in other jurisdictions. It is not unreasonable to assume that prison officials in the sending State will comply with their obligations under the Agreement even where those obligations are not enforced by specific sanctions.

Rather than strengthening the IAD, petitioner's construction would spawn litigation over the timing of prisoners' requests to prison officials. If the 180-day period is deemed to run from the date that a prisoner submits his request to the prison officials in the sending State, the dismissal sanction would give a prisoner a strong incentive to claim that he submitted his request to the prison officials at some point long before the request was forwarded to the receiving State. Such claims would be difficult to rebut other than by a dated receipt signed by the prisoner; in addition, they would likely require a hearing in the receiving State that would in turn require the presence of prison officials from the sending State as witnesses to the date that the prisoner first submitted his request. Any marginal benefits of petitioner's construction in speeding resolution of charges on which detainers are based would thus be outweighed by the cumbersome proof problems that petitioner's construction would introduce into IAD proceedings.

2. Petitioner is also wrong in suggesting (Pet. Br. 8-9) that the prosecutor is in a better position than the prisoner to prevent a delay in forwarding the prisoner's request. The prosecutor normally does not even learn of the request until after it has been forwarded to him by prison officials in the sending State. At that point, the prosecutor obviously cannot prevent any delays in forwarding, because they will already have occurred. It thus does not matter that, under petitioner's interpretation, the prosecutor may have a greater incentive to prevent forwarding delays, since he has no ability to do so.

In contrast to the prosecutor, the prisoner knows when he has given a request for disposition to prison officials and is therefore in a better position to ensure that it is forwarded promptly. For example, the

prisoner can insist that he be provided with proof that his request has been mailed to the appropriate officials. See IAD, Art. III(b) (warden should send request "by registered or certified mail, return receipt requested"). Under petitioner's interpretation of Article III(a), however, a prisoner would have no incentive to take such steps. On the contrary, he would have an incentive to maximize the delay in forwarding the request to the receiving State, since longer delays would make it more likely that the prosecutor in the receiving State would be unable to bring the prisoner to trial within the 180-day period (measured from the date the prisoner gives his request to prison officials in the sending State). Thus, adoption of petitioner's interpretation could well lead to increased forwarding delays.

3. Petitioner next asserts that his construction of the timing provision of Article III(a) would seldom "prevent the just prosecution of a miscreant," because in most cases "[t]he prosecutor would lose no more than the few days it takes for [a prisoner's request] to be delivered." Pet. Br. 21. That assertion provides no basis for preferring petitioner's interpretation over that adopted by the Michigan Supreme Court. By the same reasoning, in most cases prisoners will experience no more than a few days of delay in being brought to trial if the 180-day period runs from the date of actual receipt. More importantly, while prisoners will rarely suffer any harm from such brief delays, the consequences for the prosecutor of a delay of a few days can mean the difference between obtaining a conviction and suffering complete dismissal of the charges with prejudice.[8]

[8] In federal prosecutions, dismissal of the charges may be with or without prejudice, depending on, among other fac-

4. Petitioner asserts, finally, that "[w]here there is a lengthy delay in delivery, or where the request for disposition is lost in the mail," the prosecutor may request a continuance pursuant to Article III(a). Pet. Br. 21. If petitioner means to suggest that a continuance would be justified in that situation, then petitioner's argument is self-defeating. It makes no sense to argue that the prosecutor should bear the consequences of a delay because the prosecutor can always avoid those consequences by seeking relief on a case-by-case basis.

The greater problem with petitioner's argument is that a prosecutor will not always be able to avoid dismissal of a case when prison officials unduly delay forwarding a prisoner's request. For example, if the prisoner's request is misplaced and more than 180 days pass after the prisoner submitted the request to prison officials in the sending State, the charges in the receiving State would be subject to dismissal even before the prosecutor receives notice of the prisoner's request and can seek a continuance.[9]

In sum, contrary to petitioner's suggestion, the construction of Article III(a) adopted by the Michigan Supreme Court does not defeat the purposes of the Interstate Agreement on Detainers. Article III(b) of the Agreement requires prison officials to forward

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tors, "[t]he seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainers and on the administration of justice." 18 U.S.C. App. § 9, at 705. The statutory provision permitting dismissals without prejudice, however, does not apply to state prosecutions.

[9] Courts are divided on the question whether a continuance must be sought before the 180-day period expires. See L. Abramson, *supra*, at 105 (discussing cases).

a prisoner's request for disposition promptly. The prosecutor must then obtain custody of the defendant and arrange for a trial within 180 days after he receives that request. Absent an assumption of bad faith on the part of prison officials in the sending State, petitioner's construction of the timing provision in Article III would not reliably shorten the period within which prisoners are brought to trial. It would only increase the potential for gamesmanship and result in occasional dismissals of indictments because of delays that were not the fault of courts or prosecuting officials in the receiving State.

C. The History of the IAD and Case Law Construing It Support Interpreting Article III(a) to Require Actual Receipt To Trigger the 180-Day Period

This Court has suggested that the 180-day period in Article III(a) commences when the appropriate officials receive a prisoner's request, but it has never addressed the question directly. See *Carchman* v. *Nash*, 473 U.S. 716, 721 (1985).[10] Numerous lower

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[10] In *Nash* (473 U.S. at 721), the Court described the operation of the IAD as follows (emphasis added):

> Art. III requires the warden to inform the prisoner that a detainer has been lodged against him and that he may request final disposition of the indictment, information, or complaint upon which the detainer is based. If the prisoner makes such a request, the warden must forward it, [along with certain information about the prisoner's terms of imprisonment], to the appropriate prosecuting official and court of the receiving State. The authorities in the receiving State *then* must bring the prisoner to trial within 180 days, absent good cause shown, or the court must dismiss the indictment, information, or complaint with prejudice, and the detainer will cease to be of any force or effect.

See also S. Rep. No. 1356, 91st Cong., 2d Sess. 2 (1970) ("Any request is transmitted through the warden to the proper

federal courts and state courts have done so, however. And, contrary to petitioner's contention (Pet. Br. 8, 11), the great majority of courts have interpreted the 180-day period to commence upon actual receipt.[11]

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official in the other jurisdiction who *then* has 180 days to bring the prisoner to trial.") (emphasis added).

[11] See, *e.g.*, *Hall* v. *Florida*, 678 F. Supp. 858, 862 n.1 (M.D. Fla. 1987); *Young* v. *Mabry*, 471 F. Supp. 553, 561 (E.D. Ark. 1978), aff'd, 596 F.2d 339 (8th Cir.), cert. denied, 444 U.S. 853 (1979); *People* v. *Bielecki*, 588 P.2d 377, 378 (Colo. Ct. App. 1978); *State* v. *Braswell*, 481 A.2d 413, 417-418 (Conn. 1984); *Thompson* v. *State*, 367 S.E.2d 247, 249 (Ga. Ct. App. 1988); *Scrivener* v. *State*, 441 N.E.2d 954, 956 (Ind. 1982); *Sweat* v. *Darr*, 684 P.2d 347, 352-355 (Kan. 1984); *State* v. *White*, 673 P.2d 1106, 1110 (Kan. 1983); *State* v. *Walton*, 734 S.W.2d 502, 503 (Mo. 1987); *State* v. *Ternaku*, 383 A.2d 437, 439 (N.J. Super. Ct. App. Div.), certificate denied, 391 A.2d 494 (N.J. 1978); *State* v. *Moosey*, 504 A.2d 1001, 1003 (R.I. 1986); *State* v. *Moore*, 774 S.W.2d 590, 593-595 (Tenn. 1989); see also, *e.g.*, *United States* v. *Nesbitt*, 852 F.2d 1502, 1516 (7th Cir. 1988) (dictum endorsing actual-receipt rule), cert. denied, 488 U.S. 1015 (1989); *United States* v. *Espinoza*, 866 F.2d 1067, 1070 (9th Cir. 1988) (180-day period never commenced because proper officials were not properly notified of prisoner's request); *United States* v. *Ricketson*, 498 F.2d 367, 372 (7th Cir.) (dictum endorsing actual-receipt rule), cert. denied, 419 U.S. 965 (1974); *Beebe* v. *Vaughn*, 430 F. Supp. 1220, 1223 (D. Del. 1977) (same); *McCallum* v. *State*, 407 So. 2d 865, 869 (Ala. Crim. App. 1981) (same); *Rockmore* v. *State*, 519 P.2d 877 (Ariz. Ct. App. 1974) (180-day period ran from date prosecutor received defendant's request for speedy trial, even though request did not meet formal IAD requirements); *Spears* v. *State*, 660 S.W.2d 913, 919 (Ark. 1983) (dictum endorsing actual-receipt rule); *State* v. *Minnick*, 413 So. 2d 168, 169 (Fla. Dist. Ct. App. 1982) (same); *People* v. *Daily*, 860 N.E.2d 1131, 1136-1137 (Ill. Ct. App. 1977) (180-day period did not begin to run when proper notice never received). Contra *Commonwealth* v. *Martens*, 500 N.E.2d 282, 284-285 (Mass. 1986), cert. denied, 481 U.S. 1041 (1987); cf. *People* v. *Esposito*, 37 Misc. 2d 386, 396 (N.Y. County Ct. 1960).

The history of the IAD supports that interpretation.[12] The IAD was drafted by the Council of State Governments; it was first published in the Council's *Suggested State Legislation, Program for 1957* (1956). At the same time that the Council proposed an agreement to govern disposition of interstate detainers, it also proposed model legislation governing intrastate detainers. *Id.* at 77-78. Both the interstate and the intrastate proposals contained language virtually identical to the language in Article III(a) at issue here. See *id.* at 77 (intrastate proposal, Section 1, lines 4-9); *id.* at 81 (proposed Interstate Agreement, Art. III(a), lines 5-9). The Council stated that the intrastate proposal was "based substantially on statutes [then] operative in California and Oregon." *Id.* at 76. The timing provisions in both statutes were triggered by actual receipt by the prosecutor of the request for prompt disposition. The California statute required a prisoner to be brought to trial "within ninety days after [he] shall have delivered to said district attorney written notice of the place of his imprisonment and his desire to be brought to trial upon said indictment or information." Act of May 28, 1931, ch. 486, § 1, 1931 Cal. Stat. 1060; see also *People* v. *Godlewski*, 140 P.2d 381, 384 (Cal. 1943). The Oregon statute required trial "within 90 days of receipt [by the district attorney] of [the prisoner's] notice." Act of Apr. 29, 1955, ch. 387, § 2(1), 1955 Or. Laws 435; see also

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[12] This Court has reviewed the history of the IAD in prior decisions, see *Nash*, 473 U.S. at 726-734; *Cuyler* v. *Arams*, 449 U.S. 433, 447-449 (1981); *United States* v. *Mauro*, 436 U.S. 340, 349-356 (1978); accordingly, only the directly pertinent aspect of that history will be discussed here.

State v. *Liefke*, 789 P.2d 700, 701 (Or. Ct. App. 1990).

As we have explained, the IAD was drafted to require the prisoner to "cause" delivery, because the prisoner was not expected to deliver the required documents directly to officials in the receiving State. Instead, the prisoner was required to give his request for disposition to prison officials. In contrast, the California and Oregon models contemplated that prisoners would send their requests directly to the pertinent district attorneys. There is no evidence, however, that the IAD's drafters intended to alter the actual-receipt requirement that was clearly embodied in the state models. On the contrary, the close resemblance between the timing provisions in the state statutes and those in the Council's proposals suggests an intention to adopt that requirement. The drafting history of the Agreement is therefore entirely consistent with the most natural reading of the language of Article III(a), which uses the "delivery" of the request for prompt disposition to the appropriate officials in the receiving State as the trigger for the 180-day period for trial.

CONCLUSION

The judgment of the Supreme Court of Michigan should be affirmed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

RICHARD H. SEAMON
Assistant to the Solicitor General

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